FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Cri. Application No. 4556 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. V. V. Purwant for applicants.
Mr. S.R.Shinde APP
APP for state.

CORAM: A.M. KHANWILKAR J.

DATE: 3/11/2004

P.C.:

Heard learned counsel for the parties. Perused the record.

The applicants apprehend arrest in connection with offence under section 376 (i) (k) (g), 354, 506 read with section 34 of IPC. The investigation is still in progress. The prosecutrix has identified applicant no. 2 in the commission of the offence. The offence is of a serious nature. Hence the anticipatory bail application at the instance of applicant no. 2 deserves to be rejected. Accordingly his prayer for being released on bail is refused.

In so far as applicant no.1 is concerned he has not been identified by the proscutrix. According to him he has been falsely implicated. Taking the over all view of the matter applicant no.1 deserves to be granted anticipatory bail but on strict conditions.

Applicant no.1 is enlarged on bail in connection with CR No. 26 of 2002 of Daund Railway Police Station, on executing a personal bond in the sum of Rs.25000/- with two sureties in the like amount. The applicant shall extend full cooperation to the investigating agency, failing which it can be a ground for cancellation of bail.

Besides the said applicant shall comply with the conditions specified in section 438 (2) of the Code , as applicable to the State of Maharashtra, as a condition for being released on anticipatory bail. Ordered accordingly.

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that Heard learned counsel for the parties. Perused the record. The first contention raised before this court is that there is no office committed under Section 50 of the NDPS Act. It is argued that there is no mention in the statement of the concerned constables that the accused was offered opportunity for being searched before the Gazetted Officer. This submission has been rightly countered by the learned APP by relying on the decision of the Apex Court in Kalema Tumba vs. State of Maharashtra (1999) (8) SCC 257 and State of Punjab Vs. Makhan Chand (2004) SCC 453. In other words the recovery of contraband items is from the bags recovered from the accused and not from the person of the accused, which would attract provisions of section 50 of the Act. In any case the material on record indicate that the accused were offered opportunity of being searched before the Gazetted Officer, but the accused refused in writing to avail of that opportunity. In these circumstances it is not a case of non-compliance of section 350 of the Act.

It is next contended that there is no material on record to suggest about the procedural failure for the withdrawal of the samples from the contraband items seized from the accused. Even this submission does not appeal to me. The learned APP has rightly placed reliance on the panchanama to support the arguments that proper procedure for withdrawal of the samples from the contraband items has been followed. Thus even the second contention is of no avail to the petitioners.

It is lastly contended that the Police Officer has forwarded the entire contraband items seized from the petitioners to the Chemical Analyzer. This argument is pressed relying on the statement of police constable Ashok Eknath Shinde and police constable Annasaheb Ramchandra Suryavanshi which mention the fact that 8 bags and 2 bags have been forwarded to the chemical analyzer. Once again this submission overlooks the material on record. The panchanama clearly records 8 bags were the samples from the contraband items and 2 bags which were forwarded were empty bags and not the entire seized items as contended. If it is so even this submission is of no avail to the petitioners.

Taking the overall view of the matter it is not

possible to take the view that the petitioner are not guilty of the alleged offence. If it is so not a case for grant of bail. Rejected.

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